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SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

Congressman Michael R. Turner, Chairman



OVERSIGHT HEARING STATEMENT BY MICHAEL R. TURNER, CHAIRMAN

Hearing topic: *"The Ohio Experience: What Can Be Done to Spur Brownfield Redevelopment in America's Heartland?"*

Monday, May 16, 2005

10:30 a.m.

**Case Western Reserve University
Cleveland, Ohio**

OPENING STATEMENT

Welcome to the Subcommittee on Federalism and the Census' field hearing entitled *"The Ohio Experience: What Can Be Done to Spur Brownfield Redevelopment in America's Heartland?"* This is a follow up to a hearing held on the same topic in Washington, DC on April 5, 2005. This is the Subcommittee's first field hearing and our first opportunity to interact with individual communities on a more personal basis. Our hearings in DC are informative and helpful, but all too often we only get the inside-the-beltway viewpoint. Field hearings allow us to reach out to the public and learn first-hand of your concerns and suggestions. I am very pleased with the response to this hearing – both from our great number of witnesses and from the public in attendance here today. I would also like to express my appreciation to the City of Cleveland for hosting us and to Dr. Edward Hundert, president of Case Western Reserve University, and his staff for sharing their facilities and for their accommodating efforts.

In every community across this nation there are abandoned parcels of property marring the faces of our cities and towns. Behind rusted chain link fences are broken windows and crumbling buildings. Beneath the surface there are substances contaminating the local environment, robbing the communities in which they exist of new jobs and other economic opportunities. There are an estimated 450,000 to 1 million of these parcels, known as brownfields, across our nation, contributing to community blight and thus lowering property values and decreasing tax revenues. In our state of Ohio alone, there are an estimated 4,000 to 6,000 of these blighted properties. These sites lay abandoned and unused due to

federal environmental laws and regulations that encourage abandonment of contaminated property by creating disincentives for cleanup and redevelopment. Current federal law triggers liability for remediation of contaminated properties once landowners have knowledge of the contamination. If redevelopment begins and contamination is discovered, the owner may be liable for remediation costs. If an owner abandons the property without disturbing the contamination, remediation costs may be avoided. The net effect of these laws and loopholes is the encouragement of abandoning brownfields.

If we are to achieve our goal of restoring these properties to productive use, and redeveloping them into centers of economic and community vitality, we must craft a federal response to a federally created problem. We cannot leave brownfields and abandoned factories as monuments to their once productive pasts. The redevelopment of brownfields will create jobs, new living and shopping choices, and spur the improvement or development of transportation and infrastructure. If we make redevelopment of brownfields more attractive, we can also help reduce urban sprawl and save green space. In my hometown of the city of Dayton, Ohio, over 50 acres of land surrounding our downtown are brownfields that would attract jobs and spur economic expansion -- if the city had assistance in addressing the environmental contamination from past use of the parcels.

In 2002, the President signed the Small Business Liability Relief and Brownfields Revitalization Act of 2001. While the law codified and secured independent appropriations for the EPA's brownfields program, the shining accomplishment of the Act was providing some relief from the daunting amount of potential liability for acquiring and attempting to redevelop a brownfield site. Specifically, the Act limits liability for owners of land that is contaminated by adjoining property as well as for prospective purchasers of known contaminated property. The Act also clarified the CERCLA "innocent landowner" defense and created additional liability relief by forbidding the federal government from intervening at sites being cleaned up under a state program except in certain circumstances. The Act addressed funding and liability issues -- strong first steps in encouraging brownfields redevelopment. The Subcommittee looks forward to hearing from EPA on the effect the brownfields program and new liability relief has achieved in Region V and in Ohio specifically.

Last year, I, along with Chairman Tom Davis, requested that the Government Accountability Office (GAO) study the status of brownfields redevelopment across the nation. GAO's report shows that stakeholders are generally positive about EPA's brownfields program but that additional incentives, such as a tax credit, are needed to spur further brownfields redevelopment and really make a difference in communities across the country.

In response to that study, I plan to introduce legislation similar to H.R. 4480 from last Congress, the "Brownfields Revitalization Act of 2004." H.R. 4480 proposed a tax credit of up to 50 percent for qualified remediation expenses of brownfields in certain poverty-rated areas. Specifically, credits are available to redevelopment projects where the local government entity includes a census tract with poverty in excess of 20 percent although the project need not be located within that tract. H.R. 4480 also provides additional liability relief by allowing potentially responsible parties that contribute at least 25 percent of remediation costs to receive liability release for 100 percent of the approved remediation plan and demolition costs.

The bill I plan to introduce in the near future will be revised to address some of the concerns of stakeholders. The new bill will clarify the liability relief provisions, making clear that the relief is limited to the approved remediation plan while liability for other types of claims, such as liability to adjacent property owners or for outstanding health complaints, is unaffected. The bill will also provide that an environmental remediation plan be approved by the state environmental agency.

The EPA's brownfields program has assisted a number of communities in brownfields assessment and cleanup. Stakeholders are appreciative of the EPA's brownfields program, especially with the easing of the regulatory regime. However, when choosing between brownfields, grayfields, and greenfields for development projects, it still comes down to a cost-benefit analysis. Unless we significantly address the cost of redevelopment and clean up of these sites, the EPA

brownfields program will continue to affect only a few thousand sites, leaving a major gap and burdening many communities with land that cannot be redeveloped and that remain a blighting influence.

We have two panels of witnesses before us to help us understand the state of brownfields redevelopment and the impact of the EPA's brownfields program across the state of Ohio. We also hope to hear your ideas for improving or complementing the EPA brownfields program in order to encourage more aggressive redevelopment.

Our first panel consists of six witnesses from the national, state, and municipal governments.

- Joseph Dufficy, Chief of the Brownfields and Early Action Section in the Environmental Protection Agency Region 5 Office;
- Amy Yersavich, Manager of the Voluntary Action Program at the Ohio EPA;
- The Honorable Frank Sarosy, Mayor of the Village of Fairport Harbor, Ohio;
- The Honorable Daniel Pocek, Mayor of the City of Bedford, Ohio;
- Tracy Nichols, Assistant Director for Economic Development for the Cuyahoga County Department of Development; and
- Casey Stephens, Manager of Public Services and Brownfield Coordinator for the City of Toledo Division of Environmental Services.

The second panel of witnesses consists of representatives from the Ohio stakeholder community.

- Alex Machaskee, President and Publisher of The Plain Dealer;
- Todd Davis, CEO of Hemisphere Development, LLC;
- Thomas Stone, Executive Director of the Mt. Pleasant NOW Development Corporation;
- Barry Franz, Principal Engineer of Civil & Environmental Consultants, Inc.;
- Craig Kasper, CEO of Hull & Associates, Inc.; and
- Kevin O'Brien, Executive Director of the Great Lakes Environmental Finance Center at the Cleveland State University Maxine Goodman Levin College of Urban Affairs.

I look forward to the expert testimony our distinguished panel of leaders will provide today. Thank you all for your time today and welcome.

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